

# **TENNESSEE CODE ANNOTATED**

Incorporating Actions Through the 1999 Regular Session

## **TITLE 13 PUBLIC PLANNING AND HOUSING**

### **CHAPTER 23 HOUSING DEVELOPMENT AGENCY**

#### **Part 1 General Provisions**

##### **13-23-101. Short title.**

This part shall be known and may be cited as the “Tennessee Housing Development Agency Act.” [Acts 1973, ch. 241, §1; T.C.A., § 13-2301.]

##### **13-23-102. Fund raising - Powers - Purposes.**

In order to promote the production of more affordable new housing units for very low, low and moderate income individuals and families in the state, to promote the preservation and rehabilitation of existing housing units for such persons, and to bring greater stability to the residential construction industry and related industries so as to assure a steady flow of production of new housing units, the Tennessee housing development agency shall be given the power to raise funds from private investors through issuance of its bonds and notes and to use such funds, along with investment income, and moneys from other public and private sources to:

- (1) Make funds available to sponsors, developers and builders for financing land development and residential housing construction for lower and moderate income persons and families;
- (2) Make funds available to sponsors, developers, builders and purchasers for permanent mortgage financing of housing for lower and moderate income persons and families;
- (3) Purchase existing insured mortgages from lenders within the state and direct an amount equal to the proceeds from the liquidated mortgage investments into new mortgages on residential real property;
- (4) Enter into advance commitments with lenders to purchase insured mortgage loans made to persons and families of lower and moderate income; and further, provide technical, consultative and project assistance services to sponsors of land development or residential housing; and assist in coordinating federal, state, regional and local public and private efforts and resources to otherwise increase the supply of such residential housing;
- (5) Make funds available for housing loans for veterans who qualify as persons and families of low and moderate income by including in each issue of bonds sold under this chapter a veterans’ administration guaranteed loan program; and
- (6) Make grants to eligible political subdivisions, as defined by §13-23-103 to such private nonprofit corporations that provide housing and related services in the state; however, such grants must be for purposes which are consistent with the purposes and mission of the agency, and must be allocated and administered in a fashion and manner as is directed by the agency through appropriate rules, regulations and proceedings. [Acts 1973, ch. 241, §2; T.C.A., §13-2302; Acts 1984, ch. 799, §4; 1988, ch. 900, §1.]

### 13-23-103. Definitions.

As used in this part, unless the context otherwise requires:

- (1) “Agency” means the Tennessee housing development agency created by this part;
- (2) “Average Tennessee household” means the Tennessee household of average size and median gross annual household income based on the most recent federal census;
- (3) “Bonds” or “notes” mean the bonds and notes respectively authorized to be issued by the agency under this chapter;
- (4) “Eligible political subdivision” means a county, metropolitan government, municipality receiving community development block grant funds directly from the United States department of housing and urban development, a municipality in a county not otherwise applying, or a consortium of such eligible political subdivisions;
- (5) “Energy-saving improvement” means an improvement to a residential housing unit through the installation of insulation, heating or cooling systems conservative of energy, or other fixtures to the structure capable of reducing its total energy needs;
- (6) “Governmental agency” means any department, division, public agency, political subdivision or other public instrumentality of the state, the federal government, and other state or public agency, or any two (2) or more thereof;
- (7) “Housing cost index” means an index of specific housing cost factors to the average Tennessee household calculated monthly or at such times as the agency may require, based on the following formula:

The median gross monthly household income divided into the sum of:

- (A) The monthly mortgage payment for the average Tennessee household based on a thirty-year mortgage, at the prevailing mortgage interest rate on a mortgage amount sufficient to purchase a standard housing structure that will meet minimum property standards as established by the federal housing administration, including an amount representative of the average yield in discount points and servicing fees to the lender on such mortgage, based on the average discount paid at the latest Federal National Mortgage Association mortgage auction sale;
  - (B) A monthly cost factor for mortgage insurance based on the mortgage insurance premium that would be required on the mortgage at the prevailing interest rate; and
  - (C) An average monthly cost factor for taxes and fire insurance incurred by the average Tennessee household on a standard housing structure as required by federal housing administration minimum property standards based on data compiled by the federal housing administration;
- (8) “Insured construction loan” means a construction loan for land development or residential housing which is secured by a federally insured mortgage or which is insured or guaranteed by the United States or an instrumentality thereof, or for which there is a commitment by the United States or instrumentality thereof to insure or guarantee such a loan, or a construction loan which is secured by a policy of insurance or guarantee issued by any private mortgage insurer qualified to issue such insurance or guarantee in Tennessee and approved by the agency, or for which there is a commitment to insure or guarantee such loans made by any private mortgage insurer qualified to do business in Tennessee and approved by the agency, or a

construction loan insured or guaranteed by an agency or instrumentality of the state authorized by law to issue such insurance or guarantee, or for which there is a commitment to insure or guarantee such loan made by such agency or instrumentality of the state;

(9) (A) “Insured mortgage” or “insured mortgage loan” means a mortgage loan for residential housing insured or guaranteed by the United States or any instrumentality thereof, or for which there is a commitment by the United States or instrumentality thereof to insure or guarantee such a mortgage, or a mortgage loan which is secured by a policy of insurance or guarantee issued by any private mortgage insurer qualified to issue such insurance or guarantee in Tennessee and approved by the agency, or for which there is a commitment to insure or guarantee such loan made by any private mortgage insurer qualified to do business in Tennessee and approved by the agency, or a mortgage loan insured or guaranteed by any agency or instrumentality of the state authorized by law to issue such insurance, or for which there is a commitment to insure or guarantee such loan made by such agency or instrumentality of the state;

(B) “Insured mortgage” or “insured mortgage loan” also means a loan made on a qualified residential property in which the borrower owns, or is prepared to own by use of a cash down payment, at least twenty-five percent (25%) of the equity in the property based on its appraisal value or the sale price, whichever is the lesser amount;

(10) “Land development” means the process of acquiring land primarily for residential housing construction for persons and families of lower and moderate income and making, installing or constructing nonresidential housing improvements, including water, sewer and other utilities, roads, streets, curbs, gutters, sidewalks, storm drainage facilities and other installations or works, whether on or off the site, which the agency deems necessary or desirable to prepare such land primarily for residential housing construction within this state;

(11) “Lender” or “qualified lender” means any bank or trust company, federally approved mortgagee, insurance company, mortgage banking institution, federally insured savings and loan association or insured state building and loan association, which is located and authorized to do business in the state, and which is approved by the agency, or the federal national mortgage association;

(12) “Low income household” means an individual or family unit whose income does not exceed eighty percent (80%) of the area or state median income, whichever is greater, adjusted for family size;

(13) “Mortgage” shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof;

(14) “Obligations” means any bonds or notes authorized to be issued by the agency under the provisions of this part;

(15) “Persons and families of lower and moderate income” means persons and families irrespective of race, creed, national origin, age or sex deemed by the agency to require such assistance as is made available by this chapter on account of insufficient personal or family income based upon the income limits established by the board of directors. In establishing these income limits, the board of directors shall be required to take into consideration, without limitation, such factors that will ensure for the citizens of the state, the equal opportunity to live in equal quality housing relative to their needs, including the following:

(A) The amount of the total income of such persons and families available for housing needs;

- (B) The size of the family;
  - (C) The cost and condition of housing facilities available, including consideration of the following:
    - (i) Cost of a typical dwelling lot;
    - (ii) Cost of materials;
    - (iii) Cost of labor;
    - (iv) Cost of real estate taxes; and
    - (v) Cost of home owners' or renters' insurance;
  - (D) The eligibility of such persons and families for federal housing assistance of any type predicated upon a lower income basis; and
  - (E) The ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing, and deemed by the agency therefore to be eligible to occupy residential housing constructed and financed, wholly or in part, with insured construction loans or insured mortgages, or with other public or private assistance;
- (16) "Qualified sponsors, developers, builders or purchasers" means any person, corporation, profit or nonprofit, public or private, licensed general contractor or any other person or entity deemed by the board of directors to be qualified in providing housing for low and moderate income families; however, the Tennessee housing development agency shall not be deemed to be included in the definition herein;
- (17) "Qualifying not-for-profit corporation" means a not-for-profit organization that qualifies as such under the Internal Revenue Service Code § 501 (C)(3) and chartered by the state or a nonprofit affiliate of such organization. Such qualifying organization must have substantial experience in providing low and moderate income households with housing. Specific experience and other qualifying criteria shall be set by the agency through rule and regulation;
- (18) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations for persons and families of lower and moderate income, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto and such other non-housing facilities as may be incidental or appurtenant thereto;
- (19) "Servicing fees" means that sum paid for the reasonable value of services rendered to the agency for the servicing of mortgages it acquires;
- (20) "Servicing of mortgages" means the collection and payment of all principal and interest and all reasonable fees and charges by the "lender" for mortgages acquired by the agency;
- (21) "Solar hot water heater" means an appliance or system capable of producing most or all of the hot water needs of an average Tennessee household through the use of natural sunlight;
- (22) "State" means the state of Tennessee; and
- (23) "Very low income household" means an individual or family unit whose income does not exceed fifty percent (50%) of the area or state median income, whichever is greater, adjusted for

family size. [Acts 1973, ch. 241, §3; 1974, ch. 702, §1; 1978, ch. 884, §1; T.C.A., §13-2303; Acts 1988, ch. 900, §12; 1991, ch. 466, §2.]

### **13-23-104. Creation.**

There is hereby created a body, politic and corporate, to be known as the “Tennessee housing development agency.” The agency, a political subdivision and instrumentality of the state, shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and shall be deemed to be serving a public purpose and improving and otherwise promoting their health, welfare, and prosperity, and that the Tennessee housing development agency shall be empowered to act on behalf of the state of Tennessee and its people in serving this public purpose for the benefit of the general public. [Acts 1973, ch. 241, §4; 1974, ch. 702, §2; T.C.A., §13-2304.]

### **13-23-105. Board of directors.**

The agency shall have a board of directors which shall be responsible for carrying out the powers given to the agency by this part. [Acts 1973, ch. 241, §4; 1979, ch. 442, §8; T.C.A., §13-2305.]

### **13-23-106. State officer members - Delegation of duties.**

(a) The state treasurer, the comptroller of the treasury, the commissioner of finance and administration, the secretary of state, and a staff assistant to the governor to be designated in writing by the governor, and their successors in the office, from time to time shall, by virtue of their incumbency in such offices and without further appointment or qualification, be directors of the agency.

(b) Such directors may designate a member of their respective staffs to attend meetings of the board of directors or its committees and to exercise their right to vote in their absence. Such designations must be made in writing to the chairperson of the board of directors and filed with the secretary of state. [Acts 1973, ch. 241, §4; 1975, ch. 320, §1; 1977, ch. 483, §1; 1979, ch. 442, §1; T.C.A., §13-2306.]

### **13-23-107. Appointed members - Qualifications.**

(a) (1) The governor shall appoint the following members of the agency, who shall be citizens of the state and shall not hold public office: one (1) licensed real estate broker; one (1) person engaged in the savings and loan association profession; one (1) person engaged in the mortgage banking profession; one (1) person engaged in the retail building material supply profession; one (1) person engaged in the manufactured housing profession; one (1) person engaged in the homebuilding profession; one (1) executive director of a local public housing authority; one (1) person representing local governments; one (1) person from a qualifying not-for-profit corporation; and three (3) persons from the public at large who are knowledgeable about the problems of inadequate housing conditions in the state. When making appointments, the governor shall give due consideration to geographic distribution of the members of the agency to ensure that all parts of the state are adequately represented. With respect to the three (3) persons appointed from the public at large, one (1) person shall be from the first, second or third congressional district, one (1) person shall be from the fourth, fifth or sixth congressional district and one (1) person shall be from the seventh, eighth or ninth congressional district. In making appointments to the agency board of directors, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older and that at least one (1) person appointed to serve on the board is a member of a racial minority.

(2) The speaker of the senate and the speaker of the house of representatives shall each appoint one (1) member from the public at large who shall be citizens of the state, shall not hold public office and shall be knowledgeable about the problems of inadequate housing conditions in the state. Any change in the status or profession of an appointed member shall not affect such member's position or term as a member of the agency.

(b) Each member of the agency duly appointed by the governor pursuant to the former provisions of this section shall continue to serve and fill such member's respective membership position until the expiration of the term of office to which such member was appointed and until such member's successor is duly appointed and qualified. At the expiration of the term of office to which a member was appointed pursuant to the former provisions of this section, such member may be reappointed subject to the limitations imposed by this section and §13-23-108. [Acts 1973, ch. 241, §4; 1979, ch. 442, §2; T.C.A., §13-2307; Acts 1982, ch. 641, §1; 1988, ch. 900, §2; 1988, ch. 1013, §11; 1993, ch. 21, §1.]

### **13-23-108. Appointed members - Terms, etc.**

(a) The members of the board of directors appointed pursuant to §13-23-107 shall serve for a term of four (4) years, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Upon the expiration of the member's term, the member shall continue to serve until a successor is duly appointed and qualified. When making appointments, the governor shall consider recommendations from relevant interest groups for each vacancy. Furthermore, when making appointments, the governor and speakers shall give consideration to the ethnic, economic and social composition of the state, with particular emphasis on achieving a balance among urban and rural members from the three (3) grand divisions of the state. No appointed member shall serve more than two (2) consecutive terms, unless one (1) such term is an appointment to fill an unexpired term with less than two (2) years remaining, but such appointed member may continue to serve until such appointed member's successor is duly appointed and qualified.

(b) Each appointed member may be removed by the governor for misfeasance, malfeasance, or willful neglect of duty as determined by the governor. Any appointed member who is absent from four (4) meetings of the board of directors during any twelve-month period shall cease to be a member of the agency and the position shall become vacant upon certification of such fact to the governor by the secretary of the agency.

(c) Before entering into the appointed member's duties, each appointed member shall take an oath of office to administer the duties of such appointed member's office faithfully and impartially, and a record of such oath shall be filed in the office of the secretary of state. [Acts 1973, ch. 241, §4; 1977, ch. 483, §2; 1979, ch. 442, §3; T.C.A., §13-2308; Acts 1988, ch. 900, §3; 1992, ch. 724, §1.]

### **13-23-109. Compensation of members.**

The members of the agency shall receive no compensation for their services, but shall be entitled to receive, from funds of the agency, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. [Acts 1973, ch. 241, §4; 1976, ch. 806, §1(57); 1979, ch. 442, §7; T.C.A., §13-2309.]

### **13-23-110. Quorum.**

A majority of the members of the agency shall constitute a quorum, and the affirmative vote of eight (8) members at a meeting of the members duly called and held shall be necessary for any action taken by the

membership of the agency, except when expressly stated otherwise. The affirmative vote of nine (9) members shall be necessary for the issuance of bonds or notes and for the selection or appointment of an executive director and issuance of commitments for housing developments. No vacancy in the membership of the agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the agency. For the purposes of determining a quorum and the number of affirmative votes at a meeting, persons who have been delegated the right to vote in accordance with §13-23-106 shall be considered members of the agency. [Acts 1973, ch. 241, §4; 1975, ch. 320, §5; 1977, ch. 483, §3; T.C.A., §13-2310; Acts 1988, ch. 900, §4; 1993, ch. 21, §2.]

#### **13-23-111. Chairperson - Vice chairperson.**

The governor shall designate from those appointed members of the agency a member to serve as chairperson. The term of the chairperson shall extend to the earlier of either the date of expiration of such member's then current term as a member of the agency or a date six (6) months after the expiration of the then current term of the governor designating such chairperson. The agency shall annually elect one (1) of its members as vice chairperson. [Acts 1973, ch. 241, §4; T.C.A., §13-2311; Acts 1988, ch. 900, §14.]

#### **13-23-112. Officers - Executive director - Secretary - Audit and budget committee.**

- (a) The agency shall elect or appoint, and prescribe the duties of, such other officers as the agency deems necessary or advisable, including an executive director and a secretary.
- (b) The executive director shall be a person of good moral character and shall be professionally qualified to administer the programs and duties of the agency. Such professional qualifications must as a minimum be evidenced by a minimum of three (3) years' experience immediately preceding such professional's appointment or election in the theory and practice of residential housing construction, law, real estate, home mortgage finance, architecture, building materials supply, public administration or urban planning.
- (c) The executive director shall administer, manage and direct the affairs and business of the agency subject to the policies, control and direction of the board of directors.
- (d) The secretary of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. The executive secretary shall have authority to cause copies to be made of all minutes and other records and documents of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.
- (e) All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.
- (f) The state treasurer shall be the treasurer of the agency. The treasurer shall be the custodian of the assets of the agency except for those assets required by contracts with bondholders to be in the custody of the trustee. The board of directors shall set the investment policy for agency assets and the treasurer shall be responsible for making investments in accordance with such policy. The treasurer may delegate all or a portion of these duties and responsibilities to the executive director.
- (g) The secretary of the bond finance committee shall, subject to the policies of the board of directors and bond finance committee, be responsible for the execution of all matters relating to the issuance and servicing of the bonds and notes of the agency. The secretary of the bond finance committee may delegate these duties and responsibilities to the executive director.

- (h) (1) There is hereby created an audit and budget committee of the agency. The audit and budget committee shall be composed of the following: the chairperson of the agency, the vice chairperson of the agency, the comptroller of the treasury and two (2) members appointed annually by the chairperson from among the appointed members of the board. The chairperson of the agency shall serve as chairperson of the audit and budget committee, and the agency's internal auditor shall serve as secretary.
- (2) Three (3) or more members of the audit and budget committee shall constitute a quorum and the concurring vote of three (3) members shall be required for the approval of matters coming before the committee. Written minutes of all meetings shall be prepared by the secretary and kept on file, open to public inspection. The audit and budget committee shall be charged with the responsibility of monitoring agency financial and programmatic controls, including potential conflicts of interest of agency members and staff. To carry out these responsibilities, the committee shall review reports from the agency internal audit staff and shall review agency financial and programmatic controls at least annually, and shall review and submit the annual agency budget to the bond finance committee and the board. [Acts 1973, ch. 241, §4; 1976, ch. 806, §1(57); T.C.A., §13-2312; Acts 1988, ch. 900, §5; 1992, ch. 724, §2.]

#### **13-23-113. Distribution of benefits restricted.**

No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. [Acts 1973, ch. 241, §4; T.C.A., §13-2313.]

#### **13-23-114. Housing cost index - Program becoming operative.**

The agency shall establish a housing cost index as defined in §13-23-103 to be computed monthly or at such time or times as the agency in its discretion may require. The housing cost index shall serve to determine what percentage of the average Tennessee household's gross monthly income is required to pay for primary fixed housing costs under then existing housing market conditions and to establish a basis for a threshold at which the financial assistance programs of this chapter will become effective. Thus, it is hereby found and declared that when primary housing costs as defined by the housing cost index, reach or exceed twenty-five percent (25%) of an average Tennessee household's gross monthly income, a majority of Tennessee citizens are excluded from the normal housing market; and in light of that finding, when the housing cost index reaches or exceeds a factor of twenty-five percent (25%) and upon the approval of the board of directors, the financial assistance programs established in this chapter will become operative to aid in providing adequate housing for lower and moderate income persons and families as defined by §13-23-103(15). Notwithstanding any other provision of this section, the agency may at any time approve the operation of the financial assistance programs of this chapter with the affirmative vote of nine (9) members of its board of directors. [Acts 1973, ch. 241, §4; T.C.A., §13-2314.]

#### **13-23-115. General powers.**

The agency has all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power to:

- (1) Make or participate in the making of insured construction loans to qualified sponsors, developers, and builders for land development and/or for residential housing for lower and moderate income persons and families, all subject to the provisions of §13-23-116;
- (2) Make or participate in the making of insured mortgage loans to qualified sponsors, developers, builders and purchasers of residential housing for lower and moderate income persons and families, all subject to the provisions of §13-23-117;



- (3) Acquire, and contract to acquire, insured mortgages owned by lenders, and enter into advance commitments to lenders for the purchase of the mortgages, all subject to the provisions of §13-23-118;
- (4) Purchase, make, or participate in the making of insured loans to low and moderate income persons and families for the purpose of improving or rehabilitating existing residential housing and, in connection therewith, refinance existing loans involving the same property. Such loans shall be secured by a mortgage lien on the improved or rehabilitated property. The agency is also empowered to make loans to low and moderate income persons and families for the purpose of purchasing and rehabilitating residential housing;
- (5) Establish, and revise from time to time and charge and collect fees and charges in connection with making, purchasing and servicing any of its loans, notes, commitments and other evidences of indebtedness;
- (6) Pay reasonable fees and charges in connection with making or purchasing its loans, notes, bonds and other evidences of indebtedness;
- (7) Acquire real property, or any interest therein, in its own name, by purchase, transfer, foreclosure or otherwise; but only as may be necessary to carry out and effectuate the purposes of this part. The provisions of this subdivision shall be limited to meeting the requirements of the agency relative to a delinquency or default on the payment of any loan owned by the agency;
- (8) Subject to any agreement with bondholders or noteholders, sell any mortgages or other personal property acquired by the agency at public or private sale and at such price or prices as it shall determine;
- (9) Subject to any agreement with bondholders or noteholders, collect, enforce the collection of, and foreclose on any mortgage or other collateral securing an insured construction loan or an insured mortgage loan, and acquire or take possession of such mortgage or other collateral and sell the same at public or private sale, with or without bidding, and otherwise deal with such mortgage or collateral as may be necessary to protect the interests of the agency therein;
- (10) Procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (11) Subject to any agreement with bondholders or noteholders, consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of a mortgage loan, mortgage loan commitment, construction loan, contract or agreement of any kind to which the agency is a party;
- (12) Subject to any agreement with bondholders or noteholders, invest moneys of the agency not required for immediate use, including proceeds from the sale of any bonds and notes in collateralized guaranteed investment contracts of longer than one (1) year and otherwise in the same manner as permitted by law for the investment of state funds;
- (13) Make, enter into and enforce all contracts or agreements necessary, convenient or desirable for the purposes of the agency or to the performance of its duties and execution or carrying out of its powers under this part, including contracts or agreements with any person, firm, agency, governmental agency or other entity, and all Tennessee governmental agencies are hereby authorized to enter into contracts and agreements, and otherwise cooperate with the agency to facilitate the purposes of this part;

- (14) Contract for and accept any gifts or grants or loans or appropriations of funds or property, or financial or other aid in any form from the United States or any agency or instrumentality thereof, or from the state or any agency, instrumentality or political subdivision thereof, or from any other source, and comply, subject to provisions of this part and to any agreements with bondholders or noteholders, with the terms and conditions thereof. Any grant funds becoming available to the agency for subsidies of housing for low-income families, other than those becoming available to the agency in its capacity as a mortgage lender or construction loan lender, shall be paid first to the various housing authorities in the state, to meet the subsidy needs of low-rent public housing as determined necessary by the agency, before any such funds are made available for any housing financed through the provisions of this part;
- (15) Borrow money and issue negotiable bonds and notes for the purposes provided in this part and provide for and secure the payment thereof and provide for the rights of the holders thereof;
- (16) Include in any borrowing such amounts as may be deemed necessary by the agency to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory and legal fees, and such other expenses as are necessary or incident to such borrowing;
- (17) Subject to any agreements with bondholders or noteholders, purchase bonds or notes of the agency out of any funds or money of the agency available therefor, and hold, cancel or resell such bonds or notes;
- (18) Make and publish rules and regulations respecting its financial assistance programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (19) Make and execute contracts for the servicing of mortgages acquired by the agency pursuant to this part, and pay the reasonable value of services rendered to the agency pursuant to those contracts;
- (20) (A) Renegotiate, refinance or foreclose, or contract for the foreclosure of, any mortgage in default;
- (B) Waive any default or consent to the modification of the terms of any mortgage;
- (C) Commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; or
- (D) Operate, manage, lease, dispose of, and otherwise deal with such property, in such manner as may be necessary to protect the interests of the agency and the holders of its bonds and notes;
- (21) Employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the agency, and fix and pay their compensation from funds available to the agency therefor. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. The employees of the agency may participate in the Tennessee consolidated retirement system established under title 8 chapters 34-37 and the state comprehensive group insurance program;

- (22) Provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents thereof, including relocation assistance services to persons and families displaced because of public works projects;
- (23) Promote research and development in proper land use planning for both urban and rural areas, in the use of technical codes in the home building industry, in planning and providing adequate community services and facilities, and in scientific methods of constructing low-cost residential housing of high durability;
- (24) Sue and be sued in its own name, plead and be impleaded;
- (25) Maintain an office in the city of Nashville and at such other place or places as it may determine;
- (26) Adopt an official seal and alter the same at pleasure;
- (27) Adopt bylaws for the regulation of its affairs and the conduct of its business and prescribe rules, regulations and policies in connection with the performance of its functions and duties;
- (28) Do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part;
- (29) Purchase, make, or participate in the making of insured loans to low and moderate income persons and families for the purpose of making energy-saving improvements to residential housing units. Such loans shall be secured by a mortgage lien on the improved or rehabilitated property. The agency shall also be empowered to make loans to low and moderate income persons and families for the purpose of purchasing solar hot water heaters for residential housing units;
- (30) Designate “areas of chronic economic distress” to be the target areas required by §103A of the Internal Revenue Code (26 U.S.C. §103A);
- (31) Make grants to eligible political subdivisions and to such private nonprofit corporations that provide housing and related services in the state consistent with the purposes and mission of the agency;
- (32) Serve as a clearinghouse for properties made available through the provisions of the federal Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA); and
- (33) Provide a reserve for the bond and loan programs and provide for administrative and operational support of the Tennessee industrial finance corporation, created pursuant to title 4, chapter 17, part 4. [Acts 1973, ch. 241, §5; 1974, ch. 702, §3; 1976, ch. 806, §1(57); 1977, ch. 483, §9; 1978, ch. 884, §2; T.C.A., §13-2315; Acts 1981, ch. 505, §3; 1988, ch. 900, §6; 1990, ch. 979, §1; 1992, ch. 724, §3; 1998, ch. 724, §3.]

**13-23-116. Insured construction loans for development or rehabilitation - Loans for energy-saving improvements and solar water heaters - Energy use considered in making loans.**

- (a) The agency shall be empowered to make or participate in the making of insured construction loans to qualified sponsors, developers and builders for land development and/or residential housing, including the rehabilitation thereof, for lower and moderate income persons or families when the financial assistance programs of this part become effective under the provisions of this part. However, the agency will not make or participate in the making of any insured construction loans until it has notified all qualified lenders that the insured construction loan program is in effect and that the agency is prepared to enter into working agreements with

qualified lenders for the making of insured construction loans to qualified sponsors, developers and builders; and it has determined that the insured construction loan is not otherwise available, totally or in part from qualified lenders upon reasonably equivalent terms and conditions. Except as provided herein, the agency may make such loans directly only after the agency has notified all qualified lenders with whom working agreements have been established of a sponsor's, developer's or builder's loan application with the agency and after a reasonable time from the date of notification, no qualified lender has agreed in writing with the sponsor to make the insured construction loan either as a mortgagee or agent for a mortgagee, upon reasonably equivalent terms and conditions. Such loans made under the provisions of this section to public housing agencies, public and private nonprofit corporations or other public or private nonprofit entities, limited distribution entities, may be made by the agency to such borrower directly when the agency has determined that the loan is not otherwise available, totally or in part, from private qualified lenders upon reasonably equivalent terms and conditions.

(b) (1) The agency may make loans to qualified lenders under terms and conditions requiring the proceeds thereof to be used for the making of loans for the construction or rehabilitation of residential housing by qualified sponsors, developers, and builders. Such loans may be made only after the agency has issued to the qualified sponsor, developer, or builder its commitment to make or participate in the making of an insured mortgage loan, or the agency has received evidence of an existing commitment to make the permanent loan, and the qualified lender has entered into an agreement with the agency agreeing to make the construction or rehabilitation loan on terms and conditions consistent with the provisions of this part and the agency's rules and regulations.

(2) The agency may require that such loans to qualified lenders be secured as to payment of both principal and interest by a pledge of and lien upon collateral security in such amounts as the agency shall determine to be necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security shall consist of:

(A) Direct general obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States or the state;

(B) Bonds, debentures, participation certificates or notes issued by the federal national mortgage association or the federal home loan mortgage corporation or by an agency or corporation which has been or is hereafter created by or pursuant to an act of the congress of the United States as an agency or instrumentality thereof; or

(C) Mortgages insured or guaranteed by the United States or an instrumentality thereof as to payment of principal and interest.

(c) In making loans for rehabilitation of residential housing, the agency shall consider proposals for energy-saving improvements and solar hot water heaters, and, if feasible, include the costs of such improvements or heater in the amount of the loan.

(d) The agency shall be empowered to make loans for energy-saving improvements and solar hot water heaters to persons and families of lower and moderate incomes for residential housing occupied and owned or rented by such person or family. Such loans shall be under such conditions, with such security, and with such repayment plans as the agency may determine. In determining repayment schedules, however, the agency shall attempt to match repayments with the savings resulting to the person or family in their residential utility bill from the improvement or solar water heater. Consideration shall also be given to providing a revolving loan fund.

(e) The agency shall be provided with standards for a listing of reliable and efficient solar hot water heaters by the appropriate federal agency.

(f) The agency shall give consideration, in making any loan authorized by this chapter, to energy-saving improvements and appliances included in the proposed design, improvement or rehabilitation of residential housing and shall, in making loans, give maximum consideration to any proposal which would decrease energy use typical of present construction or designs. [Acts 1973, ch. 241, §6; 1974, ch. 702, §4; 1975, ch. 320, §2; 1977, ch. 483, §11; 1978, ch. 884, §§3-5; T.C.A., § 3-2316.]

### **13-23-117. Insured mortgage loans.**

(a) The agency shall be empowered to make or participate in the making of insured mortgage loans to qualified sponsors, developers or builders of residential housing for lower and moderate income persons and families and to lower and moderate income persons who are purchasers of residential housing when the financial assistance programs of this part become effective under the provisions of §13-23-114. No insured mortgage loans available under the provisions of this section shall be made for nonowner-occupied residential housing unless the sponsor, developer, builder or purchaser is a public housing agency, a public or private nonprofit corporation or other public or private nonprofit entity or a limited distribution entity, established or certified to do business under the laws of the state and such public agency, corporation or entity has on file with the agency the salary schedule of its officers and employees or unless such residential housing shall be fully or partially occupied by residents assisted under a federal housing assistance program. However, the agency will not make or participate in the making of any insured mortgage loans until it has notified all qualified lenders that the insured mortgage loan program is in effect and that the agency is prepared to enter into working agreements with qualified lenders for the making of insured mortgage loans to qualified sponsors, developers, builders and purchasers; and it has determined that the insured mortgage loan is not otherwise available, totally or in part, from private qualified lenders upon reasonably equivalent terms and conditions. Except as provided herein, the agency may make such loans directly only after the agency has notified all qualified lenders with whom the agency has working agreements of a sponsor's, developer's, builder's, or purchaser's pending loan application and after a reasonable time from the date of notification, no qualified lender has agreed in writing with such qualified sponsor, developer, or builder or with such qualified purchaser to make an insured mortgage loan either as mortgagee, or as an agent for a mortgagee upon reasonably equivalent terms and conditions.

(b) Any loan made at a reduced interest rate under the provisions of this section to purchasers of owner-occupied residential housing shall not be assumed or in any way transferred to a subsequent purchaser of such owner-occupied residential housing unless such purchaser qualifies as a person or family of lower or moderate income under the provisions of §13-23-103(15). Any loan made at a reduced rate under the provisions of this section to sponsors, developers, builders and purchasers of nonowner-occupied residential housing shall not be assumed or in any way transferred to a subsequent purchaser of such residential housing unless such purchaser is a public housing agency, a public or private nonprofit corporation or other public or private nonprofit entity or a limited distribution entity, established or certified to do business under the laws of the state as hereinbefore provided in this section. Such loans made under the provisions of this section to such public housing agencies, public or private nonprofit corporations or other public or private nonprofit entities, limited distribution entities, may be made by the agency to such borrower directly when the agency has determined that the loan is not otherwise available, totally or in part, from qualified private lenders upon reasonably equivalent terms and conditions.

(c) For purposes of this chapter, "limited distribution entity" means a corporation, trust, partnership, association, individual or other entity regulated by the agency as to the amount of distribution, retirement of capital investment, or redemption of stock or other ownership interest,

in such a manner that any such distribution, retirement, or redemption will not exceed in any one (1) fiscal year ten percent (10%) (or such lesser percentage as shall be prescribed by the rules and regulations of the agency) of such limited distribution entity's equity in a nonowner-occupied residential housing development. The limited distribution entity's equity in the development shall consist of the difference between the agency mortgage loan on the development and the total project cost. By regulation, the agency shall prescribe the categories of costs constituting "total project cost," including organizational expenses, land acquisition, plans and specifications, interest and financing charges paid during construction, construction costs, architects, engineering, legal and accounting fees, and a reasonable builder's profit and job overhead. A limited distribution entity's equity in a nonowner-occupied residential housing development shall be established by the agency resolution approving the mortgage loan. For the purposes of this subsection, that equity shall remain constant during the life of the agency mortgage loan on such housing development, except for additional equity investment made by the limited distribution entity after agency approval. Should the limited distribution entity accumulate earned surplus in addition to such maintenance and replacement reserves as the agency may require in excess of ten percent (10%) of the first full year's proposed annual rent roll, the agency may direct that the development's rents be reduced to the extent necessary to lower the earned surplus accumulation to the ten percent (10%) (or such lesser percent as the agency shall have prescribed by its rules and regulations) return on equity factor established at the granting of the agency mortgage loan.

(d) Owner-occupied dwellings shall include one (1) to four (4) family units occupied in whole or in part by the owners, as well as units constructed or existing under the "Horizontal Property Act," compiled in title 66, chapter 27.

(e) When allocating funds for loans on new homes, the agency shall attempt to give priority to homes which incorporate energy conserving design and construction, and which include solar heating systems and solar hot water heaters. [Acts 1973, ch. 241, §7; 1974, ch. 702, §5; 1975, ch. 320, §3; 1977, ch. 483, §4; 1979, ch. 442, §9; T.C.A., §13-2317.]

### **13-23-118. Purchase of mortgages.**

(a) The agency shall be empowered to purchase mortgages from lenders or enter into advance commitments to lenders for the purchase of mortgages during periods when the financial assistance programs of this chapter become effective under the provisions of §13-23-114.

(b) (1) "Mortgage," as used in this section, means an insured loan owed to a lender secured by a first lien on a fee simple or leasehold estate in real property located in the state and improved by a residential structure.

(2) "Real property," as used in this subsection, includes air rights.

(c) The agency may purchase or enter into advance commitments to purchase insured mortgages from lenders at such prices and upon such terms and conditions as it shall determine; provided, that the total purchase price for all mortgages which the agency commits to purchase from a lender at any one (1) time shall in no event be more than the total of the unpaid principal balances thereof.

(d) The agency shall require as a condition of purchase of mortgages from lenders other than mortgages purchased by the agency pursuant to advanced commitment agreements that such lenders shall, within such reasonable period of time as may be approved by the agency not in excess of one hundred eighty (180) days of receipt of the purchase price, enter into written commitments to loan and shall, within such period as may be approved by the agency, loan an amount equal to the entire purchase price of such mortgages on new residential mortgages for persons and families of lower and moderate income within the state having such terms as the

agency may prescribe. The agency may refuse to approve any commitment to lend on a multiple dwelling mortgage if so required by the terms of any bonding resolution.

(e) Such new mortgages shall bear interest at a rate which does not exceed the maximum interest rate, if any, set by the agency for such mortgages. The agency may set such a maximum interest rate chargeable on such new loans at the rate that the mortgages purchased by the agency were discounted to yield plus an interest differential, not in excess of one percent (1%) per annum, which the agency from time to time shall determine to be adequate consideration to induce such lenders to sell existing mortgages to the agency and to loan an amount equal to the proceeds on new mortgages in furtherance of the purposes of and subject to the conditions of this chapter.

(f) The agency shall require the submission to it by each lender from which the agency has purchased mortgages, evidence satisfactory to the agency of the making of new mortgage loans and in connection therewith may, through its employees or agents, inspect the books and records of any such lender.

(g) Compliance by any lender with the terms of its agreement with or undertaking to the agency with respect to the making of any mortgage loans may be enforced by decree of any circuit or chancery court of the state of Tennessee. The agency may require as a condition of purchase of mortgages from any lender, which is a national banking association, the consent of such lender to the jurisdiction of the circuit or chancery court over any such proceeding. The agency may also require agreement by any lender, as a condition of the agency's purchase of mortgages from such lender, to the payment of penalties to the agency for violation by the lender of its undertakings to the agency, and such penalties shall be recoverable at the suit of the agency.

(h) The agency shall require as a condition of purchase of any mortgage from a lender that the lender represent and warrant to the agency that:

- (1) The unpaid principal balance of the mortgage and the interest rate thereon have been accurately stated to the agency;
- (2) The amount of the unpaid principal balance is justly due and owing;
- (3) The lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or the mortgagor's successor in interest;
- (4) The mortgage is evidenced by a bond or promissory note and a mortgage document which has been properly recorded with the appropriate public official;
- (5) The mortgage constitutes a valid first lien on the real property described to the agency subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;
- (6) The mortgage loan when made was lawful under state law and/or federal law, whichever governs the affairs of the lender, and would be lawful on the date of purchase by the agency if made by the lender on that date in the amount of the then unpaid principal balance;
- (7) The mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of the mortgagor's obligations under the mortgage documents and has not to the knowledge of the lender been in default in the performance of any such obligation for a period of longer than sixty (60) days during the life of the mortgage; and

(8) The improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in the state of Tennessee and providing fire and extended coverage to an amount not less than ninety percent (90%) of the insurable value of the improvements to the mortgaged real property.

(i) Each lender shall be liable to the agency for any damages suffered by the agency by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the lender shall, at the option of the agency, repurchase the mortgage for the original purchase price adjusted for amounts subsequently paid thereon, as the agency may determine.

(j) The agency need not require the recording of an assignment of any mortgage purchased by it from a lender pursuant to this section and shall not be required to notify the mortgagor of its purchase of the mortgage. The agency shall not be required to inspect or take possession of the mortgage documents if the lender from which the mortgage is purchased by the agency shall enter a contract to service such mortgage and account to the agency therefor. [Acts 1973, ch. 241, §8; T.C.A., §13-2318.]

### **13-23-119. [Repealed.]**

### **13-23-120. Issuance of bonds and notes - Bond finance committee - Creation.**

(a) Subject to the provisions of title 9, chapter 20 and §13-23-121, the agency has the power and is hereby authorized from time to time to issue its negotiable bonds and notes in conformity with applicable provisions of the Uniform Commercial Code of Tennessee, compiled in title 47, chapters 1-9, in such principal amounts as, in the opinion of the agency, are necessary to provide sufficient funds for achieving the corporate purposes thereof, the payment of interest on bonds and notes of the agency, establishment of reserves to secure such bonds and notes, and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers.

(b) (1) Except as may otherwise be expressly provided by the agency, all bonds and notes issued by the agency under this chapter shall be general obligations of the agency, secured by the full faith and credit of the agency and payable out of any moneys, assets, or revenues of the agency, subject only to any agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. The agency may issue such types of bonds or notes as it may determine, including bonds or notes as to which the principal and interest are payable:

(A) Exclusively from the revenues of the agency resulting from the purchase of mortgages from lenders from the proceeds of such bonds or notes;

(B) Exclusively from the revenues of the agency resulting from the purchase of certain mortgages from lenders whether or not purchased in whole or in part from the proceeds of such bonds or notes;

(C) Exclusively from the revenues of the agency resulting from the making of insured construction loans;

(D) Exclusively from the revenues of the agency resulting from the making of insured mortgage loans; or

(E) From its revenues generally.



(2) Any such bonds or notes may be additionally secured by a pledge of any grant, subsidy or contribution from the United States or any agency or instrumentality thereof or the state or any agency, instrumentality or political subdivision thereof or any person, firm or corporation, of a pledge or any income or revenues, funds or moneys of the agency from any source whatsoever.

(c) Bonds and notes shall be authorized by a resolution or resolutions of the agency adopted as provided by this chapter; provided, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer of the agency the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certificate of such authorized officer.

(d) Such bonds or notes shall bear such date or dates, shall mature at such time or times, shall bear interest at such rate or rates, shall be of such denominations as approved by the agency but not less than five thousand dollars (\$5,000), shall be in such form, carry registration privileges, be executed in such manner, be payable in lawful money of the United States at such place or places within or without the state so long as one (1) place is within the state, be subject to such terms of redemption prior to maturity as may be provided by such resolution or resolutions or such certificate with respect to such bonds or notes, as the case may be; provided, that the maximum maturity of bonds does not exceed forty (40) years from the date thereof and the maximum maturity of notes or any renewals thereof does not exceed five (5) years from the date of the original issue of such notes.

(e) (1) Prior to the commencement of each fiscal year of the state, the agency shall submit to the state funding board a schedule showing the financings proposed to be undertaken by the agency during such fiscal year. Such schedule shall specify the amount of funds estimated to be required by the agency for the financing of loans for the purchase or rehabilitation of owner-occupied residential housing for occupancy by not more than four (4) families and the amount estimated to be required by the agency for the financing of loans for any other residential housing, indicating particularly the amount estimated to be used to finance facilities for the mentally or physically handicapped. In addition, such schedule shall also specify the agency's estimates of:

(A) The amounts required to provide for costs of issuance, capitalized interest and the funding of reserves in connection with the financing of such loans;

(B) The total amount of obligations necessary to be issued to provide for such financings and the amounts expected to be provided therefor from unexpended proceeds of any outstanding obligations of the agency or from any other source;

(C) The principal amounts and months of sale of each issue of such obligations; and

(D) The spread, expressed in basis points, determined to be necessary to finance the agency's operations for such fiscal year.

(2) The agency may submit a revised schedule of proposed financings to the state funding board at any time for its consideration. If, but not unless, a schedule (or revised schedule) of proposed financings for such fiscal year has been submitted to and approved by the state funding board, the agency may during such fiscal year make advance commitments to make loans in the types and amounts stated in such schedule or revised schedule. However, no such commitment may be made which is not subject to the

availability of the funds to be provided through the issuance of obligations of the agency unless such commitment is either:

- (A) For a loan to be made from sources other than the proceeds of bonds as shown in such an approved schedule or revised schedule; or
  - (B) For a loan to be made from the proceeds of sale of outstanding obligations of the agency as shown in the resolution of the agency authorizing the application of the proceeds of such obligations.
- (3) (A) There is hereby created a bond finance committee of the agency. The bond finance committee shall be composed of the following: the chairperson of the agency, the commissioner of finance and administration, the state treasurer, the comptroller of the treasury, and the secretary of state. The chairperson of the agency shall serve as chairperson of the bond finance committee, and the comptroller of the treasury shall serve as secretary. The chairperson shall preside at all meetings of the committee; provided, that in the absence of the chairperson, the secretary shall serve as acting chairperson. The committee shall appoint an assistant secretary to perform such duties as it directs and as may be delegated by this chapter. In the absence of both the chairperson and the secretary, the committee shall designate by official action of the committee a member of the committee to serve as acting chairperson.
- (B) Three (3) or more members of the bond finance committee constitute a quorum, and the concurring vote of three (3) members is required for the approval of any matters coming before the committee for determination. Written minutes covering all meetings and actions of the committee shall be prepared by the secretary and shall be kept on file, open to public inspection during reasonable business hours. The bond finance committee shall select bond counsel and such managing underwriters as the bond finance committee deems necessary for all obligations issued by the agency.
- (C) It is the duty and responsibility of the bond finance committee to periodically review and evaluate the performance of the agency's trustee and report its findings and recommendations to the board of directors.
- (4) Prior to making any other preparation for the authorization, issuance or sale of any issue of obligations, the assistant secretary of the bond finance committee, with the assistance of the executive director, shall prepare and submit a plan of financing for such issue to the bond finance committee which shall specify:
- (A) The maximum aggregate principal amount of the obligations to be issued;
  - (B) The amount of the proceeds of sale expected to be applied to:
    - (i) The making of loans for owner-occupied residential housing for occupancy by not more than four (4) families;
    - (ii) The making of loans for housing facilities for the mentally or physically handicapped;
    - (iii) The making of loans for any other residential housing;
    - (iv) The payment of costs of issuance and capitalized interest;

(v) The funding of reserves; and

(vi) Any other purpose;

(C) The estimated maturities, interest rates, redemption terms, if any, of such issue of obligations and the spread, expressed in basis points, determined to be necessary to finance the agency's operations as determined to be allocable to the issue; and

(D) The proposed method and date of sale and, in general, the proposed terms of such sale.

(5) Upon approval of the plan of financing, the assistant secretary of the bond finance committee, with the assistance of the executive director, may proceed with the preparation of the necessary documents pertaining to the authorization, issuance and sale of such obligations. Upon authorization and adoption by the board of the bond resolution authorizing the terms and conditions of such obligations and providing for the application of the proceeds thereof, the bond finance committee shall be authorized to proceed with the sale of such obligations on behalf of the agency.

(6) Failure by the agency to comply with the provisions of this subsection (e) shall not affect the validity of any obligations issued by the agency or the sale thereof if the resolution of the agency authorizing the terms of such obligations has been submitted to the bond finance committee, and such obligations have been sold by the bond finance committee on behalf of the agency.

(f) The agency is authorized to provide for the issuance of its bonds or notes for the purpose of refunding any bonds or notes of the agency then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the redemption date next succeeding the date of delivery of such refunding bonds or notes. The proceeds of any such bonds or notes issued for the purpose of refunding outstanding bonds or notes shall be applied to the purchase, retirement, or redemption of such outstanding bonds or notes as determined by the agency and may, pending such application, be placed in escrow until applied to such purchase, retirement, or redemption. Any such escrowed proceeds, pending such use, may be invested and reinvested in the same manner as permitted by law for the investment of state funds.

(g) Whether or not the bonds and notes are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, compiled in title 47, chapters 1-9, the bonds and notes are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code of Tennessee, subject only to the provisions of the bonds and notes for registration.

(h) Subject only to the provisions of title 9, chapter 20 and §§13-23-121 and 13-23-122, any resolution or resolutions authorizing any bonds or notes of the agency may contain provisions which may be a part of the contract with the holders of such bonds or notes, as to:

(1) Pledging or creating a lien, to the extent provided by such resolution or resolutions, on all or any part of any moneys or property of the agency or of any moneys held in trust or otherwise by others for the payment of such bonds or notes;

(2) Otherwise providing for the custody, collection, securing, investment and payment of any moneys of the agency;

(3) The setting aside of reserves or sinking funds and the regulation or disposition thereof;

- (4) Limitations on the purpose to which the proceeds of sale of any issue of such bonds or notes then or thereafter to be issued may be applied;
- (5) Limitations on the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and upon the refunding of outstanding or other bonds or notes;
- (6) The procedure, if any, by which the terms of any contract with the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which such consent may be given;
- (7) The creation of special funds into which any moneys of the agency may be deposited;
- (8) Vesting in a trustee or trustees such properties, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed pursuant to §13-23-123, and limiting or abrogating the right of the holders of bonds or notes to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;
- (9) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the agency and providing for the rights and remedies of the holders of bonds or notes in the event of such default; provided, that such rights and remedies shall not be inconsistent with the general laws of this state and other provisions of this chapter; and
- (10) Any other matters of life or different character, which in any way affect the security and protection of the bonds or notes and the rights of the holders thereof.
  - (i) Any resolution or resolutions or trust indenture or indentures under which bonds or notes of the agency are authorized to be issued may contain provisions for vesting in a trustee or trustees such properties, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the holders of any issue of notes or bonds pursuant to §13-23-123, in which event the provisions of §13-23-123 authorizing the appointment of a trustee by such holders of bonds or notes shall not apply.
  - (j) It is the intention of the general assembly that any pledge of earnings, revenues or other moneys made by the agency shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other moneys so pledged and thereafter received by the agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.
  - (k) Neither the members of the agency nor any person executing the bonds or other obligations shall be liable personally for the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof. [Acts 1973, ch. 241, §10; 1974, ch. 702, §6; 1975, ch. 320, §4; 1977, ch. 483, §6; 1979, ch. 442, §6; T.C.A., §13-2320; Acts 1988, ch. 900, §§15, 16; 1989, ch. 201, §§2, 3; 1990, ch. 643, §§1, 2.]

### **13-23-121. Issuance of bonds and notes - Maximum aggregate amount - Mortgage revenue bonds.**

(a) The agency shall not issue bonds and notes under this part in an aggregate principal amount at any one (1) time outstanding exceeding two billion fifty million dollars (\$2,050,000,000), excluding bonds or notes for the payment or redemption of which there has been or will be set aside and held in trust either moneys or direct and general obligations of, or obligations guaranteed by, the United States, or obligations secured by such obligations, or any combination thereof, which are or will be sufficient to pay when due the principal or applicable redemption price and all accrued interest thereon and, if such bonds or notes are to be redeemed, for which notice of redemption has been given or satisfactory provision has been made for the giving of such notice. For purposes of computing the aggregate principal amount of outstanding bonds at any one (1) time, bonds which bear no stated interest rate and for which no semiannual interest payments are to be made shall be considered to be issued and outstanding in a principal amount equal to the price paid to the agency for such bonds as of the date of their sale. For purposes of determining the price paid to the agency for such bonds, the amount per five thousand dollars (\$5,000) maturity amount which is shown on the official statement of each issue and which is approved by the agency, and its bond counsel, shall be used.

(b) The fixing of the statutory maximum in this section shall not be construed as constituting a contract between the agency and the holders of its bonds and notes that additional bonds and notes may not be issued subsequently by the agency in the event that such statutory maximum shall subsequently be increased by law.

(c) The agency will distribute funds from its programs in a manner which provides substantially proportional access to this limited resource to the three (3) grand divisions of the state as established by title 4, chapter 1, part 2, and which will provide the optimum benefit to the citizens of the state. [Acts 1973, ch. 241, §11; 1977, ch. 483, §7; 1977, ch. 484, §1; 1978, ch. 820, §1; 1979, ch. 442, §4; T.C.A., §13-2321; Acts 1980, ch. 916, §1; 1981, ch. 505, §§1, 2, 4; 1982, ch. 780, §§1, 2; 1984, ch. 799, §1; 1984, ch. 991, §§1, 2; 1985, ch. 121, §1; 1988, ch. 900, §17; 1989, ch. 201, §1; 1989, ch. 231, §1; 1991, ch. 466, §1.]

### **13-23-122. Reserve funds - Appropriations.**

(a) The agency may create and establish one (1) or more reserve funds to be known as debt service reserve funds and pay into any such reserve fund:

- (1) Any moneys appropriated by the state for the purposes of such fund;
- (2) Any proceeds of sale of bonds and notes to the extent provided in the resolution of the agency authorizing the issuance thereof;
- (3) Any moneys directed to be transferred by the agency to such debt service reserve fund; and
- (4) Any other moneys made available to the agency for the purposes of such fund from any other source or sources. The moneys held in or credited to any debt service reserve fund established under this subdivision, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the agency secured by such debt service reserve fund, as the same mature, required payments to any sinking fund established for the amortization of such bonds (hereinafter referred to as "sinking fund payments"), the purchase or redemption of such bonds of the agency, the payment of interest on such bonds of the agency or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, that moneys in such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum amount of the principal, or sinking

fund payments and interest maturing, becoming due and required to be made in any succeeding fiscal year on the bonds of the agency then outstanding and secured by such reserve fund, except for the purpose of paying the principal of and interest on such bonds of the agency secured by such reserve fund maturing and becoming due and sinking fund payments for the payment of which other moneys of the agency are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred to any other fund or account of the agency to the extent it does not reduce the amount of such debt service reserve fund below the maximum amount of principal, or sinking fund payments and interest maturing, becoming due or required to be made in any succeeding fiscal year on all bonds of the agency then outstanding and secured by such reserve fund. Subject to any agreement with bondholders or noteholders, moneys in any debt service reserve fund not required for immediate use or disbursement may be invested as provided in §45-2-607. In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund are invested shall be valued as determined by the resolution of the agency creating such debt service reserve fund, but in no event in excess of the par value thereof. If the agency shall create and establish one (1) or more debt service reserve funds as herein provided, the agency shall not issue bonds at any time if the maximum amount of principal, or sinking fund payments, and interest, maturing or required to be made and becoming due in a succeeding fiscal year on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such reserve fund at the time of issuance, unless the agency, at the time of issuance of such bonds, shall deposit in such reserve fund from the proceeds of the bonds to be issued, or otherwise an amount which, together with the amount then in such reserve fund, will be not less than the amount of principal, or sinking fund payments, and interest, maturing, required to be made and becoming due in the succeeding fiscal year on the bonds then to be issued and on all other bonds of the agency then outstanding and secured by such reserve fund.

(b) To assure the continued operation and solvency of the agency for the carrying out of the public purposes of this part, provision is made in subsection (a) for the accumulation in each debt service reserve fund of an amount equal to the maximum amount of principal, or sinking fund payments, and interest, maturing, required to be made and becoming due in any succeeding fiscal year on all bonds of the agency then outstanding and secured by such reserve fund. In order to further assure the continued operation and solvency of the agency for the fulfillment of its corporate purposes, there shall be annually apportioned and paid to the agency for deposit in each debt service reserve fund such sum, if any, as shall be certified by the chairperson of the agency to the governor and the commissioner of finance and administration, as necessary to restore any such debt service reserve fund to an amount equal to the maximum amount of principal, or sinking fund payments, and interest, maturing, required to be made and becoming due in any succeeding state fiscal year on the bonds of the agency then outstanding and secured by such reserve fund; in which case such sum so apportioned and paid shall be deposited by the agency in such debt service reserve fund.

(c) The agency may create and establish such other reserve funds as it shall deem advisable and necessary.

(d) All amounts paid over to the agency by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the agency and, subject to the rights of the holders of any bonds or notes of the agency theretofore or thereafter issued, shall be repaid to the state from all available operating revenues of the agency in excess of amounts required for the debt service, reserve funds and operating expenses.

(e) The chairperson of the agency shall make and deliver to the governor and the commissioner of finance and administration on or before November 1, 1973, and each year thereafter, a certificate stating the amount estimated to be required for payment of or provision for expenses of the agency under this part for the next ensuing state fiscal year. The amount so stated for any such ensuing state fiscal year shall be the sum of the amounts, if any, estimated for such fiscal year, by which anticipated operating expenses will exceed available operating revenues that the agency anticipates with reasonable certainty it will receive during such fiscal year. To assure the continued operation and solvency of the agency for the fulfillment of the purposes of this part, there shall be apportioned and paid to the agency after audit by the appropriate state official on vouchers certified or approved by the officer or officers authorized by the agency, not more than the amount so stated for expenses of the agency for such fiscal year.

(f) As used in this section:

(1) “Available operating revenues” for the fiscal year means all amounts received on account of mortgages acquired or loans made by the agency, fees charged by the agency, if any, and income or interest earned or added to funds of the agency due to the investment thereof, and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the agency to be applied to any purpose other than payment of expenses of the agency; and

(2) “Operating expenses” for the fiscal year means ordinary expenditures for operation and administration of the agency.

(g) Subject to agreements with bondholders or noteholders, such operating funds as are available to the agency shall be deposited in the state treasury to ensure that the administrative operation is conducted in the same manner as state agencies.

(h) Subject to agreements with bondholders or noteholders, the annual budget of the agency shall be prepared in accordance with title 9, chapter 6. [Acts 1973, ch. 241, §12; 1974, ch. 702, §7; 1975, ch. 320, §6; T.C.A., §13-2322.]

### **13-23-123. Remedies of bondholders and noteholders - Trustees.**

(a) In the event that the agency shall default in the payment of principal or of interest on any bonds or notes issued under this part after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the agency shall fail or refuse to comply with the provisions of this part, or shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five percent (25%) in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the secretary of state and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of twenty-five percent (25%) in principal amount of such bonds or notes then outstanding shall, in such trustee’s own name:

(1) Enforce all rights of the bondholders or noteholders, including the right to require the agency to collect interest and amortization payments on the mortgages held by it adequate to carry out any agreement as to, or pledge of, such interest and amortization payments, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this part;

- (2) Enforce all rights of the bondholders or noteholders, including the right to require the agency to carry out and perform the terms of any contract with the holders of such bonds or notes or its duties under this part;
- (3) Bring suit upon all or any part of such bonds or notes;
- (4) By action or suit, require the agency to account as if it were the trustee of an express trust for the holders of such bonds or notes;
- (5) By action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes; and
- (6) Declare all such bonds or notes due and payable and if all defaults shall be made good, then, with the consent of the holders of twenty-five percent (25%) of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(c) Such trustee shall in addition to the foregoing have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(d) Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty (30) days' notice in writing to the governor, to the agency and to the attorney general and reporter.

(e) The circuit or chancery court shall have jurisdiction of any suit, action or proceeding instituted on behalf of the bondholders or noteholders by such trustee or any trustee appointed and acting in conformity with §13-23-120(i). The venue of any such suit, action or proceeding shall be laid in Davidson County. [Acts 1973, ch. 241, §13; 1974, ch. 702, § ; 1977, ch. 483, § ; T.C.A., §13-2323.]

#### **13-23-124. Credit of state not pledged.**

- (a) (1) Obligations issued under the provisions of this part shall not be deemed to constitute a debt, liability, or obligation of the state or of any other political subdivision thereof, nor a pledge of the full faith and credit of the state or any other political subdivision, but shall be payable solely from the revenues or assets of the agency.
- (2) Each obligation issued under this chapter shall contain on the face thereof a statement to the effect that the agency shall not be obligated to pay the same, nor the interest thereon, except from the revenues or assets pledged therefor and that neither the full faith and credit, nor the taxing power of the state, or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.
- (3) All obligations of the agency issued under the provisions of this part are revenue bonds or notes and are not general obligations of the state of Tennessee.
- (b) Expenses incurred by the agency in carrying out the provisions of this part may be made payable from funds provided pursuant to this part, and no liability is incurred by the agency hereunder beyond the extent to which moneys have been so provided. [Acts 1973, ch. 241, §14; 1974, ch. 702, §9; T.C.A., §13-2324.]

#### **13-23-125. Annual reports - Audits.**

- (a) The agency may, in accordance with the rules, regulations, policies and procedures of the state publications committee, submit an annual report of its activities for the preceding year to the governor, comptroller of the treasury, and the general assembly. Each such report shall set forth a



complete operating and financial statement of the agency during such year. The annual report shall set forth an annual statistical report including, but not limited to, the amount of mortgage loans made and the geographic location of the property having such mortgages; the number, size and average income of families benefiting from the agency's activities; the improved size of housing for such families; and comparison of the loan interest rates for such families with and without the agency's activities.

(b) (1) An audit of the books and accounts of the agency shall be made at least once each year. Subject to the approval of the comptroller of the treasury, an independent certified public accountant may be employed to perform the audit and the cost thereof may be paid from available moneys of the agency. The comptroller of the treasury may accept such annual audit, made by such independent certified public accountant, in lieu of any audit required to be made by the comptroller of the treasury under the provisions of §8-4-109.

(2) All audits performed by the internal audit staff of the agency shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to §4-3-304(9). [Acts 1973, ch. 241, §15; 1974, ch. 702, §10; 1977, ch. 483, §12; T.C.A., §13-2325; Acts 1984, ch. 794, §9; 1990, ch. 1024, §15.]

#### **13-23-126. Authority to accept funds.**

(a) The agency is authorized to accept such moneys as may be appropriated from time to time by the general assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the agency.

(b) The agency is authorized to accept funds from any other legal and appropriate source for effectuating its corporate purposes. [Acts 1973, ch. 241, §16; T.C.A., §13-2326; Acts 1988, ch. 900, §8.]

#### **13-23-127. Tax exemption.**

(a) The exercise of the powers granted by this part will be in all respects for the benefit of the people of the state, for their well being and prosperity and for the improvement of their social and economic conditions, and the agency is not required to pay any tax or assessment on any property owned by the agency under the provisions of this part or upon the income therefrom; nor is the agency required to pay any transfer tax of any kind on account of instruments recorded by it or on its behalf.

(b) Any obligations issued by the agency under the provisions of this part, their transfer, and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state, excepting inheritance and gift taxes. [Acts 1973, ch. 241, §17; 1975, ch. 152, §1; T.C.A., §13-2327.]

#### **13-23-128. Conflicts of interest.**

(a) No member or employee of the agency, during such member's or employee's tenure or for six (6) months thereafter, shall be employed by, hold any paid official relation to, or have any financial interest in any housing sponsor or any housing development financed or assisted by the agency. No real property to which such member or employee holds legal title or in which such person has any financial interest shall be sold, during such member's or employee's tenure or for

six (6) months thereafter, to a housing sponsor for a housing development to be financed by the agency.

(b) If any member or employee of the agency has a direct or indirect interest in any other business or contract with the agency other than those described in subsection (a), or has an ownership interest in any firm, corporation, or other entity having an interest in any business or contracts with the agency other than those described in subsection (a), such interest must be disclosed in writing and set forth in the official minutes of the agency, and such member or employee must refrain from participation in any discussion or activity by the agency in connection with such business or contract.

(c) If any member or employee fails to comply with the foregoing provisions, such member or employee may, after proper notification and opportunity to be heard, be disqualified from membership with or employment by the agency by a majority vote of the board of directors and may not be reappointed to or reemployed by the agency.

(d) In no event shall any failure to comply with this section affect the validity of the authorization, issuance, or sale of bonds or notes by the agency under this part.

(e) The provisions of subsection (a) do not apply to any interest, relation, or sale disclosed by a member or employee prior to January 1, 1979, and made a part of the minutes of the agency in accordance with the then applicable law.

(f) (1) No state officer or employee shall, during such state officer's or employee's term of service or employment, or within a period of six (6) months after ceasing to be a state officer or employee, have any financial interest, directly or indirectly, in any firm, corporation, association or other organization engaged in any way in any housing program under the terms of this part.

(2) Notwithstanding any other provision of this chapter to the contrary, any state officer or employee, except officers and employees of the Tennessee housing development agency, whose financial interest, either directly or indirectly, is with or through a lender as defined in §13-23-103, is not in violation of this section, except as otherwise specifically prohibited by law. The exception granted by this subsection also applies to a constitutional officer of this state when one is acting as an individual and not in an official capacity, even though such an officer may be a director of the Tennessee housing development agency. [Acts 1973, ch. 241, §18; 1979, ch. 442, §5; T.C.A., §13-2328; Acts 1982, ch. 724, §1.]

### **13-23-129. Bonds and notes as legal investments.**

The bonds and notes of the agency are hereby made securities in which all public officers and bodies of this state and all municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, trust companies, including savings and loan associations, building and loan associations, investment banking companies and other persons carrying on an investment banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest in the bonds and notes of the agency funds including capital in their own control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or notes or other obligations of this state is now or may hereafter be authorized. [Acts 1974, ch. 702, §11; T.C.A., §13-2329.]

**13-23-130. Supplemental nature.**

This part is deemed to provide an additional and alternative method for the activities authorized thereby and is regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. [Acts 1973, ch. 241, §19; T.C.A., §13-2330.]

**13-23-131. Inconsistencies with other laws.**

Insofar as the provisions of this part are inconsistent with the provisions of any other law, general, special, or local, the provisions of this part are controlling. [Acts 1973, ch. 241, §20; T.C.A., §13-2331.]

**13-23-132. Construction.**

This part, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes. [Acts 1973, ch. 241, §21; T.C.A., §13-2332.]

**13-23-133. False statements intended to influence participation in agency programs - Penalties.**

(a) It is unlawful for any person to knowingly make, utter, or publish a false statement of substance or aid or abet another person in making, uttering, or publishing a false statement of substance for the purpose of influencing the agency to allow participation in any of its programs.

(b) A violation of this section is a Class E felony. [Acts 1977, ch. 483, §10; T.C.A., §13-2333; Acts 1989, ch. 591, §§1, 6; 1993, ch. 278, §1.]

**13-23-134 - 13-23-140. [Reserved.]**

**PART 2**  
**HANDICAPPED HOUSING LOANS**

**13-23-201. Short title.**

This part shall be known and may be cited as the “Handicapped Housing Authorization Act of 1977.” [Acts 1977, ch. 236, §1; T.C.A., §13-2341.]

**13-23-202. Loans for residential housing for handicapped persons authorized.**

The Tennessee housing development agency is hereby authorized to make, or participate in the making of, construction and permanent mortgage loans to sponsors, builders, and developers of residential housing for persons who are elderly or developmentally or physically handicapped, without respect to the requirements of §§13-23-116 and 13-23-117, provided, that no such loan or loans shall be made unless:

- (1) The United States or an instrumentality thereof has committed to provide housing assistance payments in connection with the housing development; and
- (2) Appropriate agencies of state government have entered into agreements with the Tennessee housing development agency to provide support services in connection with the housing development. [Acts 1977, ch. 236, §2; T.C.A., §13-2342.]

**13-23-203. Educational, vocational, therapeutic, medical and other services for residents.**

All affected agencies of state government are hereby authorized to enter into interagency agreements with the Tennessee housing development agency to provide educational, vocational, therapeutic, medical, or other services on behalf of residents of housing developments financed pursuant to this part. [Acts 1977, ch. 236, §3; T.C.A., §13-2343.]

**13-23-204. Maximum amount of loan.**

The maximum mortgage amount for a development financed by the Tennessee housing development agency pursuant to this part shall not exceed three hundred fifty thousand dollars (\$350,000). [Acts 1977, ch. 236, §4; T.C.A., §13-2344.]

**13-23-205. Definitions.**

The words and terms used in this part, unless the context clearly requires otherwise, have the same meaning as provided in §13-23-103. [Acts 1977, ch. 236, §5; T.C.A., §13-2345.]

**13-23-206. Inconsistencies with other laws.**

Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part are controlling. [Acts 1977, ch. 236, §6; T.C.A., §13-2346.]

**PART 3**  
**HOMEBUYERS' REVOLVING LOAN FUND POOL**

**13-23-301. Creation and use of fund.**

(a) There is established a homebuyers' revolving loan fund pool for participating Tennessee counties, for the purposes set out in this part, to be administered by the Tennessee housing development agency (herein referred to as "THDA") in accordance with the provisions of this part. The cost of administering this fund shall be borne by THDA out of its own administrative budget.

(b) The funds provided for by this part shall be used to make loans to low and moderate income persons in areas which have critical housing needs for the purpose of such persons securing residential housing, including housing which has been substantially rehabilitated, by the owner of such substantially rehabilitated property or by any third party or business entity. [Acts 1985, ch. 473, §1; 1986, ch. 510, §1.]

**13-23-302. Definitions.**

As used in this part, unless the context otherwise requires:

(1) "Loan fund pool" means appropriations by the state and any appropriations, reserves or dedications of any funds by any county which desires to participate in the homebuyers' revolving loan fund pool;

(2) "Local portion" means funds appropriated, reserved or dedicated by any county to fund its respective local portion of the loan fund pool;

(3) "Low income and moderate persons" means qualified persons or families who lack the amount of income which is necessary, as determined by THDA, to enable them, without low interest financial assistance, to live in decent, safe and sanitary dwellings without overcrowding;

(4) "Qualifying matching share" means funds from any source, other than funds appropriated, reserved or dedicated by the state or any county to specifically fund the state or any local portion, which are used to fund the amount of any loan not funded by the loan fund pool;

(5) "State portion" means funds appropriated by the state to fund the state portion of the loan fund pool; and

(6) "Substantial rehabilitation" means that improvements are made to residential real property exceeding thirty-five percent (35%) of the proposed market value of the structure after rehabilitation. [Acts 1985, ch. 473, §2; 1986, ch. 510, §2.]

**13-23-303. Initial capitalization funds - Surcharge.**

(a) Funds for the initial capitalization of the loan fund pool created by this part shall be used for loans to qualified low and moderate income persons and shall derive from the following sources in the following distribution, and payable at the rate of interest, if any, as herein provided:

(1) State portion - Seventy percent (70%) of the loan fund pool shall consist of a two million five hundred thousand dollar (\$2,500,000) appropriation for the state portion established by this part and

(2) Local portion - Thirty percent (30%) of the loan fund pool shall derive from appropriations, reserves or dedications by any county where the property is located which has agreed to participate in the project. Any county desiring to participate in the loan fund pool shall appropriate, reserve or dedicate revenues to fund its respective local portion prior to its acceptance by THDA to participate in the loan fund pool created by this part.

(b) (1) Any county so participating may, by ordinance or resolution, levy a surcharge of one dollar (\$1.00) per residential permit and five dollars (\$5.00) per commercial permit issued by the county agency or department of codes administration.

(2) Such surcharge may be levied on construction, plumbing, electrical, mechanical, moving, demolition, sign, use and occupancy, sand and gravel extraction, extension, trailer space and mobile home space, curb cut, driveway entrances and exits, sidewalks, automatic sprinklers, standpipes, and excavation and grading permits, as well as any other permit which may be issued by the county agency or department of codes administration.

(3) All surcharges collected pursuant to this subsection shall be reserved, dedicated, or appropriated to fund, in whole or in part, the local portion of the homebuyers' revolving loan fund program.

(4) If state portion funds are not available, then surcharges collected pursuant to this subsection may be used as the sole source for funding the county's homebuyers' revolving loan fund program or may be used in combination with such other funding sources as may be available.

(5) The provisions of this subsection apply only to counties of the first and second classes as classified in §8-24-101, and to counties having a population of:

<u>not less than</u>	<u>nor more than</u>
21,575	21,675
37,000	37,100

according to the 1980 federal census or any subsequent federal census. [Acts 1985, ch. 473, §3; 1986, ch. 510, §3; 1987, ch. 367, §§1-3, 1999, ch. 68, §1.]

#### **13-23-304. Qualifying matching share funding.**

(a) Funding for any qualifying matching share shall derive from any source, public or private, other than appropriations, reserves or dedications utilized to fund the state and local portions of the loan fund pool.

(b) The interest rate charged to the borrower of such funds shall not exceed the prevailing market rate of interest for residential mortgages and shall not be less than a rate which will produce a blended mortgage interest rate of three percent (3%) applicable to the total loan amount. [Acts 1985, ch. 473, §4; 1986, ch. 510, §4.]

#### **13-23-305. Loan limitations.**

(a) The amount of any loan to any borrower made by the loan fund pool created by this part shall not exceed sixty-five percent (65%) of the total loan amount, plus any permissible closing costs eligible for financing.

- (b) Loan agreements for repayment under the provisions of this part shall not exceed thirty (30) years. [Acts 1985, ch. 473, §5; 1986, ch. 510, §5.]

#### **13-23-306. Application to participate.**

- (a) A county which desires to participate in the loan fund pool established by this part shall file with THDA, in the manner prescribed by THDA, its intent to participate and the extent of its financial participation within ninety (90) days following March 5, 1986, in order to be eligible to participate in the loan fund pool during its first twelve (12) months of operation. THDA shall promulgate rules and regulations governing filings in subsequent twelve (12) month periods of operation.
- (b) The THDA shall accept only one (1) application to establish a loan fund pool per county.
- (c) In the absence of an application by any county, an incorporated municipality located within such county may file an individual or, with other municipalities in the county a joint application, but only with such county's sponsorship. [Acts 1985, ch. 473, §6; 1986, ch. 510, §6.]

#### **13-23-307. Rules and regulations - Reports.**

- (a) The THDA shall promulgate rules and regulations which guarantee equitable distribution of state appropriations for the homebuyers' revolving loan fund projects throughout the state, based upon the unmet housing needs of both rural and urban communities. However, this provision does not apply to funds appropriated pursuant to §13-23-312.
- (b) The THDA shall promulgate necessary rules and regulations to accomplish the effect and intent of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.
- (c) THDA is required to make annual status reports on the homebuyers' revolving loan fund pool activities to the governor and general assembly. [Acts 1985, ch. 473, §§7, 11; 1986, ch. 510, §§7, 11.]

#### **13-23-308. Administration of program - Deposits - Disposition of funds.**

- (a) Any county may administer its own program under the provisions of this part with THDA oversight.
- (b) All funding for state and local portions shall be deposited in an accredited financial institution located within such administrating county and used for the purposes of this part. [Acts 1985, ch. 473, §8; 1986, ch. 510, §8.]

#### **13-23-309. Persons to benefit from loans - Interest.**

- (a) Any loans to borrowers, including interest earned on investment of repayments of such loans, by any participating county shall be used to benefit low and moderate income individuals or families residing within such county during its participation in the loan fund pool. All such interest repayments shall be added to the loan fund pool and deposited in the local financial depository designated by the administrating county or with THDA in cases where local counties opt for THDA administration of their respective loan fund pools.
- (b) Interest earned on investment of repayments of the local portion of the loan fund pool shall be allocated solely to the county from which such portion derived and such interest earnings shall be included in determining the respective amount of the local portion required under §13-

23-303(a)(2) in any year following the initial year of such county's participation. [Acts 1985, ch. 473, §9; 1986, ch. 510, §9.]

### **13-23-310. Termination of participation.**

Any county may opt to terminate its participation in the loan fund pool by giving at least three (3) months' notice to THDA prior to the expiration of any twelve-month term of operation of the loan fund pool. Any such termination is without prejudice as regards participation of such terminating county in any subsequent twelve-month term of the loan fund pool. However, such terminating county's allocation of interest earnings on repayments reverts to the loan fund pool and shall be utilized for the purposes described in this part. Acceptance of any new application by such terminating county during any subsequent twelve-month term of operation of the loan fund pool is not deemed to be a forgiveness of the interest forfeiture mandated by this section. [Acts 1985, ch. 473, §10; 1986, ch. 510, §10.]

### **13-23-311. Appropriation of state's funding portion.**

Funding for the state portion of the loan fund pool established by this part is subject to funds appropriated for this purpose in the general appropriations act. [Acts 1985, ch. 473, §12; 1986, ch. 510, §13.]

### **13-23-312. State allocations for pilot demonstration and statewide programs - Local government funding.**

(a) The state shall allocate two million five hundred thousand dollars (\$2,500,000) in fiscal year 1985-1986 to fund a pilot demonstration program in any county having a population of more than seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census. Under the pilot demonstration, appropriate operational rules and procedures shall be developed and tested and appropriate documentation provided to the general assembly to evaluate the effectiveness of the program.

(b) Subsequent allocations under this part to provide for expansion as a statewide program shall be based upon the results of the demonstration program as herein established, shall be reviewed annually, and shall be modeled after the rules and procedures as established under the pilot demonstration. To the extent that subsequent allocations from the state are made available under this part for housing assistance to very low and low income households, then such allocation is subject to funding provided through the housing program fund established in title 13, chapter 23, part 4, and in accordance with the rules and regulations promulgated by the agency, pursuant thereto.

(c) Local participating governments may establish a loan fund endowment in connection with the homebuyers revolving loan program, and may charge up to five dollars (\$5.00) per month for the term of the loan as a participation fee in lieu of interest on loans made to qualified buyers. All proceeds from a loan fund endowment shall be used to support the revolving loan fund and may be used as local matching funds as required under this part.

(d) A local participating government may make "in-kind" contributions toward its matching share, not to exceed ten percent (10%) of the total match required. Such in-kind match shall include, but not be limited to, personnel costs, program support costs, such as accounting, audit, purchasing services, and other costs as established by a cost allocation plan which directly supports program operations.

(e) A local participating government may use up to ten percent (10%) of its matching cash contribution for administrative purposes to be based either upon a cost allocation plan or upon actual expenditure basis. [Acts 1986, ch. 510, §12; 1988, ch. 900, §9.]



**PART 4**  
**HOUSING FUNDS**

**13-23-401. Assets fund.**

(a) There is hereby created and established a segregated fund on the books of the agency to be known as the assets fund. This assets fund will consist of all funds of the agency which are not necessary to support the bond and note obligations of the agency and which can be withdrawn from the specific funds of the various bond resolutions of the agency, as provided under the requirements of the resolutions, and investment income from such funds. Such assets fund shall remain a general asset of the agency. From time to time, but at least annually, the assets fund will be evaluated by the bond finance committee of the agency with regard to liquidity, tax law requirements, and additional security for the agency's obligations. After such evaluation, all available investment income and appropriate principal can be transferred to the housing program fund and the housing program reserve fund created elsewhere in this part. Funds in the assets fund shall be used only for the following purposes:

(1) To invest in all legal investments allowed under state law and the bond resolution to satisfy the agency's obligations of bond and noteholders;

(2) To support the existing rental rehabilitation program which is supported by federal funds administered by the agency;

(3) For construction loans for housing as otherwise authorized in this part; provided, that such loans pay interest at a rate comparable to earnings on other permitted investments; and

(4) As a reserve to support the bond and loan programs of the Tennessee industrial finance corporation, created pursuant to title 4, chapter 17, part 4.

(b) It is the legislative intent that these funds not be depleted through any program of grants or subsidies. Furthermore, these funds shall not be commingled with the proceeds of any bond issue of the agency which are required to be held by the trustee.

(c) The board of directors of the agency may withdraw such funds from the assets fund as it deems necessary.

(d) Notwithstanding the provisions of this section to the contrary, at year end of the fiscal year ending June 30, 1998, an amount not to exceed sixty-five million dollars (\$65,000,000) of the unexpended balance of the funds in the assets fund may, at the discretion of the commissioner of finance and administration, be transferred to the state general fund. It is hereby declared to be the legislative intent that the transfer authorized herein shall be mitigated to the fullest extent possible pursuant to the applicable provisions contained in the General Appropriation Act for the year ending June 30, 1998.

(e) Beginning in the fiscal year beginning July 1, 1998, funds received by the agency pursuant to §§13-23-402(a)(2) and 13-23-402(a)(3), in excess of ten million dollars (\$10,000,000) each fiscal year shall be transferred to the assets fund until the assets fund has a fiscal year end balance of fifty million dollars (\$50,000,000); thereafter, no such funds shall be transferred to the assets fund but shall be applied in accordance with §13-23-403. [Acts 1988, ch. 900, §10; 1997, ch. 537, §1; 1998, ch. 724, §1.]

### **13-23-402. Creation of housing program fund.**

- (a) There is hereby created and established a housing program fund to be administered by the agency and to consist of the following:
  - (1) Moneys transferred from the assets fund;
  - (2) An allocation of fifteen and fifteen one-hundredths percent (15.15%) of the real estate transfer tax levied by §67-4-409(a);
  - (3) An allocation of thirteen percent (13%) of the mortgage tax levied by §67-4-409(b); and
  - (4) Such allocation of federal block grant or other federal funds as may be available and properly directed for housing programs.
- (b) Notwithstanding the provisions of subsection (a), for the fiscal year ending June 30, 1997, all allocations of tax revenues directed to the agency by subdivisions (a)(2) and (a)(3) in excess of six million dollars (\$6,000,000) shall be reallocated to the state general fund; and notwithstanding the provisions of subsection (a), for the fiscal year ending June 30, 1998, all allocations of tax revenues directed to the agency by subdivisions (a)(2) and (a)(3) in excess of nine million dollars (\$9,000,000) shall be reallocated to the state general fund; thereafter, no such reallocation shall be made.
- (c) Notwithstanding the provisions of subsections (a) and (b), or any other provision of the law to the contrary, for a period of one (1) year beginning with the fiscal year starting July 1, 1999, all allocations of tax revenues directed to the agency by subdivisions (a)(2) and (a)(3) shall be reallocated to the State General Fund. [Acts 1988, ch. 900, §10; 1991, ch. 211, §1; 1997, ch. 537, §2; 1998, ch. 816, §1, 1999, ch. 411, §1.]

### **13-23-403. Allocations from housing program fund.**

- (a) Moneys in the housing program fund shall be allocated by the agency for the following purposes:
  - (1) To fund the operating and administrative costs of the agency;
  - (2) [Deleted by 1997 amendment.]
  - (3) To pay certain expenses of bond issues and to support future bond issues by making additions to the loan funds, in order to make loans at a lower interest rate for targeted low income and special need groups, when determined appropriate by the bond finance committee and approved by the board;
  - (4) To make grants to local housing programs administered by eligible political subdivisions subject to one-to-one matching funds provided by each participant during the initial phase of the allocation process administered by the agency. The agency may prescribe the manner in which such grant funds are to be allocated to local housing programs, considering such factors as population, the adequacy of the existing housing stock to serve very low and low income households, and such other factors as may be deemed reasonable and appropriate by the agency. The agency shall establish a minimum grant amount to ensure that a viable housing program can be established by each eligible local housing program. In counties under one hundred thousand (100,000) in population, the agency may limit participation to one (1) local housing program;

- (5) To the extent that funds still remain in the housing program fund after all eligible political subdivisions applying have been awarded grants, the agency may utilize any such remaining funds for demonstration housing projects on the basis of such competitive factors as level of income to be served, cost of the housing relative to average costs in the applicable area, amount of leveraging of public and private funds, amount of local match, if any, and innovative aspects of the project, except that funds accruing prior to fiscal year end but not reported to the department of revenue until the beginning of the next fiscal year can be used to fund projects submitted during the fiscal year; and
- (6) To provide for the administration and operations of the Tennessee industrial finance corporation; any such allocation of funds shall be repaid to the agency by the Tennessee industrial finance corporation according to terms agreed to by the parties.
- (b) Special consideration shall also be given to projects to be administered by qualified not-for-profit corporations in areas of the state which would otherwise go unserved by the state's housing program fund.
- (c) [Deleted by 1997 amendment.]
- (d) It is further provided that grants provided to local programs under subdivisions (a)(4) and (5) shall not be pledged as support for tax exempt borrowing by such local programs, but must be used to directly subsidize the cost of providing housing to very low and low income households. [Acts 1988, ch. 900, §10; 1990, ch. 979, §2; 1991, ch. 466, §§4, 5; 1995, ch. 533, §§2, 3; 1997, ch. 537, §§3, 4; 1998, ch. 724, §2.]

#### **13-23-404. Reserve fund.**

- (a) There is hereby created and established a housing program reserve fund to be administered by the agency, which will consist of moneys transferred from the housing program fund and the assets fund as set out in this part. No funds in the housing program reserve fund may revert to the state general fund, but shall remain available for the purposes set out in this part. Funds in the housing program reserve fund shall be invested in any investments permitted under state law, and the income from such investments is to be transferred to the housing program fund at least annually.
- (b) Notwithstanding the provisions of subsection (a), in the fiscal year ending June 30, 1995, fifteen million dollars (\$15,000,000) of the unexpended balance of the funds in the housing program reserve funds shall be transferred to the general fund.
- (c) Up to two million dollars (\$2,000,000) per year may be transferred from the housing program reserve fund to the housing program fund for the purposes specified in §13-23-403(a). Any such transfer must first be approved by the bond finance committee and the board and such approvals must be based on a determination that such transfer is necessary to sustain the current funding levels of the grant programs of the agency or that such transfer is necessary to accomplish a special program targeted to low income and/or special needs groups. No such funds transferred shall be used to finance or fund any multifamily rental projects. Any funds transferred pursuant to this subsection shall not be subject to the requirements of §13-23-403(a)(2). In addition to the purposes specified in §13-23-403(a), the transfer authorized in this subsection is subject to the further limitation that it may be used only to support a pilot project to create, revitalize and preserve neighborhoods in up to three (3) urban areas and up to three (3) rural areas of the state. The pilot program shall exist only for three (3) years, through the end of the 1998-1999 fiscal year. The board shall report annually to the general assembly on the progress and success of the pilot program.

(d) Notwithstanding the provisions of subsection (a), at year end of the fiscal year ending June 30, 1998, all of the unexpended balance of funds in the housing program reserve fund shall be transferred to the state general fund. Once these funds have been transferred, the housing program reserve fund shall be abolished and this section shall be repealed. [Acts 1988, ch. 900, §10; 1995, ch. 450, §1; 1995, ch. 533, §1; 1997, ch. 537, §5.]

#### **13-23-405. Local programs and funds.**

(a) Local housing programs may be established by any eligible political subdivision, as defined by §13-23-103, except that for programs authorized by §13-23-403(a)(5), an eligible political subdivision does include a municipality in a county which has applied for such program, or any local agency thereof which may be authorized to operate such programs pursuant to ordinance or resolution of the applicable legislative body. Such programs shall exist for the exclusive purpose of increasing the availability of adequate housing for very low, low and moderate income households, and may include new construction of housing units, rehabilitation of existing housing units and conversion of existing publicly owned or donated structures. When funds from the Tennessee housing development agency are being used by local housing programs to provide assistance, then the projects or activities shall comply with applicable rules and regulations of the agency.

(b) Local matching funds may be made available to the local housing program by the legislative body of the eligible political subdivision. [Acts 1988, ch. 900, §10; 1991, ch. 466, §3.]

#### **13-23-406. Assistance to local programs.**

In order to assist the local housing programs authorized pursuant to this part, the agency is authorized to:

- (1) Provide technical assistance to local programs;
- (2) Develop demonstration projects for serving very low, low and moderate income persons and families;
- (3) Encourage cost effective designs of very low, low and moderate income housing;
- (4) Provide rehabilitation and construction financing from the assets fund and the housing program reserve fund at rates consistent with this chapter;
- (5) Give priority for mortgage funds made available through the mortgage revenue bonds of the agency, to housing developed by local housing programs;
- (6) In conjunction with the department of correction, implement mutually beneficial housing assistance programs for development of additional housing for very low, low and moderate income households under this part, utilizing inmates and other vocational training resources; and
- (7) In conjunction with the department of economic and community development, support the funding of applications for community development block grants for housing submitted by eligible applicants for eligible projects. [Acts 1988, ch. 900, §10.]

#### **13-23-407. Provisions controlling.**

Insofar as the provisions of this part are inconsistent with the provisions of any other law, general, special, or local, the provisions of this part are controlling. [Acts 1988, ch. 900, §11.]

#### **13-23-408. [Repealed.]**

**PART 5**  
**HOUSING TRUST FUND**

**13-23-501. Establishment - Purpose.**

(a) Any unit or units of local government, upon recommendation of the chief executive officer of the unit, may establish a housing trust fund (hereinafter referred to as the “fund”) for the purposes set out in this part to be administered by an entity approved by the participating unit or units of local government, such as a community foundation, a housing partnership, or a housing development agency (hereinafter referred to as “the approved entity”), in accordance with the provisions of this part. The cost of administering the fund shall be borne out of the fund itself, consistent with the initial plan approved by the participating unit or units of local government.

(b) The fund provided by this part shall be used to provide low income persons with safe and affordable housing. Proceeds from the fund shall be loaned, or grants made available, for programs to include, but not be limited to, the following:

(1) Funding nonprofit housing development corporations to develop affordable low income housing. Funds may be used to support projects where a nonprofit entity acts as a general partner for a limited partnership, as a sole developer, or as a joint venture investor. Projects may be affordable rental housing, property developed for resale to low income buyers, or rent to own programs;

(2) Funding ongoing existing housing programs which have been established to assist low income households; and

(3) Funding soft costs, such as housing counseling, predevelopment costs, and administrative costs of nonprofit entities related to low income housing development. [Acts 1990, ch. 986, §2.]

**13-23-502. Definitions.**

As used in this part, unless the context otherwise requires:

(1) “Housing trust fund” means a fund consisting of appropriations, reserves or dedications of any revenues except pension or retirement funds by a participating unit or units of local government, together with private and foundation sources of funds, all used for providing low income persons with safe and affordable housing;

(2) “Low income” means qualified persons or families who lack the amount of income which is necessary, as determined by the approved entity, to enable them without low interest financial assistance, to live in decent, safe and affordable dwellings without overcrowding; and

(3) “Unit or units of local government” means any city or county, separately or together, that sets up a program to establish a housing trust fund. [Acts 1990, ch. 986, §3.]

**13-23-503. Use of loans or grants - Disposition of funds.**

(a) Any loans or grants from the fund to applicants, including interest earned on investment or repayments of such loans, shall be used to benefit low income individuals or families residing within the participating unit or units of local government.

(b) All funds received for the purposes herein provided and all such interest repayments shall be added to the fund and deposited in accredited financial institutions located within the participating unit or units of local government by the approved entity administering the fund.

(c) Such funds shall be deposited in a separate account earmarked to be used solely for programs established through and included in the housing trust fund pursuant to this part. [Acts 1990, ch. 986, §4.]

**13-23-504. Design of program and promulgation of rules by approved entity.**

The approved entity shall design and tailor the program according to low income needs and requirements and shall promulgate necessary rules and regulations to implement the effect and intent of this part. [Acts 1990, ch. 986, §5.]

**13-23-505. Special escrow account - Revenue sources.**

(a) Any participating unit of local government may create a special escrow account earmarked for the sole purpose of generating revenue to transfer to the housing trust fund.

(b) Notwithstanding any other provision of law to the contrary, a participating unit of local government may specifically authorize that any revenue source, except pension or retirement funds over which the unit of local government has authority to levy and collect, may be used to provide endowment and contributions to the housing trust fund, either directly or through deposit in the special escrow account, and then by transfer to the housing trust fund. [Acts 1990, ch. 986, §6.]

**13-23-506. Applicability of part.**

The provisions of this part shall only apply in counties having a population of not less than three hundred nineteen thousand six hundred twenty-five (319,625) nor more than three hundred nineteen thousand seven hundred twenty-five (319,725) according to the 1980 federal census or any subsequent federal census. [Acts 1990, ch. 986, §7.]